

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

LUCY L. CLINE
CARL L. CLINE

Case No. 98-12031 K

Debtors

Re: TRUSTEE'S OBJECTION TO CLAIM OF EXEMPTION

MEMORANDUM AND ORDER
SUSTAINING OBJECTION IN PART AND DENYING OBJECTION IN PART

Having examined the file, the submissions, and the affidavits, the Court finds as follows.

Any interest that Mrs. Cline has in the mobile home is not exempt because the mobile home is not her principal residence. (According to the Schedules, she is co-owner. Consequently, half of the equity would be non-exempt.)

Mr. Cline, like many other "snow birds," has a hodgepodge of bi-state financial affairs that are troublesome to outside observers. He attests that he comes to New York from May to September, but when he signed his Joint Petition in March of 1998 he implied that he had spent more of the prior six months (September, 1997 to March, 1998) in New York than in

Florida. By making that representation he avoided having to file bankruptcy separately in Florida, thus saving attorney's fees and filing fees, and thus being able to double-up (with his wife) his New York exemption claims. All of his "earned income" is Florida income, and he has collected Unemployment Compensation there, but he pays New York taxes. He files jointly in New York with his retired, unemployed spouse, because that is "convenient" and "more convenient" for his son who files their tax returns.

"Snow birds" are notoriously vulnerable to getting trapped amidst their efforts to make the best out of what their "Home State" and their "Sun Belt" residence can offer. Auto insurance rates, excise and other taxes, licensing and registration requirements, estate planning, and so on.

Here, the fact most troubling to the Trustee is the Debtor's filing of New York State tax returns.

The Court finds this less troublesome because there is no state personal income tax in the state of Florida. See 50 Fla. Jur.2d, Taxation § 6:194. Though it is not likely that the Debtors pay any significant income taxes in New York, they are seemingly not avoiding Florida State income tax liability, there being no such liability. All other factors seem to be in Mr. Cline's favor, under the tests set forth by Judge McGuire in *In re Diprinzio*, No. 91-13042, (Bankr. W.D.N.Y. May 1, 1992). See also *In re Ramsey*, 348 F.Supp. 780 (E.D.N.Y. 1972, Friendly, J.).

I find that Mrs. Cline's equity is not-exempt, and Mr. Cline's equity is exempt
(not to exceed \$10,000).

SO ORDERED.

Dated: Buffalo, New York
January 12, 1999

/s/ Michael J. Kaplan

Michael J. Kaplan, U.S.B.J.